



IDAHO DEPARTMENT OF FINANCE
Policy Statement 2011-01

Policy Concerning Requirement of Financial Responsibility/Fitness of Mortgage Loan Originators, Qualified Persons in Charge, and Designated Control Persons of Mortgage Brokers and Lenders, and Deadlines for Compliance with such Requirement

I. Background

The 2009 Idaho Legislature enacted the revised Idaho Residential Mortgage Practices Act, Idaho Code § 26-31-101 *et seq.* (IRMPA) that became effective July 1, 2009. The IRMPA now consists of three parts. Part 1 includes general provisions. Part 2 includes provisions that apply to mortgage brokers and lenders. Part 3, entitled the "Idaho S.A.F.E. Mortgage Licensing Act of 2009," referred to as the "Idaho S.A.F.E. Act," incorporates the requirements of the federal S.A.F.E. Mortgage Licensing Act, which applies to mortgage loan originators.

Part 2 of the IRMPA sets forth requirements for financial responsibility, character and fitness of mortgage broker/lender license applicants, including officers, directors, members, managers, partners, and qualified persons in charge (QPICs). Part 3 of the IRMPA sets forth requirements for financial responsibility, character and general fitness of mortgage loan originator license applicants and licensees. Mortgage loan originators, as well as officers, directors, members, managers, partners, and QPICs will be referred to in the remainder of this Policy as "Individuals." It is the Department's view that the same standards of financial responsibility, character and general fitness that apply to mortgage loan originators should also apply to officers, directors, members, managers, partners, and QPICs of mortgage brokers/lenders. Therefore, once the functionality of credit reports is expanded to include designated control persons in the Nationwide Mortgage Licensing System (NMLS), Idaho intends to require credit reports for all such Individuals, and will apply the same analysis to all to determine their financial responsibility, character and general fitness.

II. Determining Financial Responsibility/Fitness

The Department will find an Individual as lacking the required financial responsibility/fitness if he or she has shown a pattern of disregard for the management of his or her personal financial affairs. The Department will also consider the following factors in determining whether an Individual meets the requirement of financial responsibility/fitness:

- The existence of outstanding judgment(s) (to exclude judgments resulting solely from medical expenses);
- The existence of outstanding tax liens or other government liens or filings;
- The existence of any liens or judgments resulting from findings of fraud, embezzlement, misrepresentation, dishonest dealing, deceit and/or mishandling of trust funds;

- The existence of any liens, judgments, or financial or professional disciplinary actions that indicate a pattern of dishonesty;
- A pattern of delinquency in child support or student loan payments;
- The existence of outstanding collection actions against the Individual (unless solely as a result of medical expenses);
- The existence of outstanding charged-off accounts with a remaining past due balance owed (unless solely as a result of medical expenses);
- The existence of three or more accounts currently 90 days or more past due;
- The Individual having gone through a foreclosure within the past three (3) years;
- The existence of a pattern of delinquent accounts within the past three (3) years; and
- The Individual having filed a bankruptcy petition within the past five (5) years. The Department will not consider a bankruptcy as the sole basis for a finding that an Individual lacks the required financial responsibility/fitness.

If an Individual's credit report or response to any application disclosure question contains adverse information, the Department will notify the Individual in writing of the specific items that must be addressed, and will specify the documentation that must be provided for the Department's consideration and review. Examples of the type of documentation that the Department may request may include, but not be limited to, the following:

- A written explanation of the circumstances surrounding the adverse information reported; and
- Documents that the Department finds necessary to its review of the adverse information. Any document provided must be legible and complete. Incomplete documents will not be accepted. Examples of documents that may be required may include, but not be limited to:
 - Copies of a satisfaction of judgment;
 - Copies of a bankruptcy discharge order or dismissal documents;
 - Copies of a satisfaction of outstanding tax liens or other governmental liens;
 - Copies of court documents that exist showing the factual basis underlying the adverse information being reviewed by the Department and how the matter was resolved or adjudicated;
 - Copies of account statements or letters from the Individual's creditors, lien or judgment holders, explaining and verifying the current status of any past due accounts, to include documentation of any repayment plans and agreements, as well as any temporary or permanent modifications to such accounts.

If the Individual is not able to obtain the documents requested by the Department, the Individual must support that fact with documentation from the source of the unavailable documents. This support must consist of a written statement from the agency or creditor who holds or held the records and must be written on the agency's or creditor's letterhead; must indicate that the agency or creditor does not have any record of the matter or that the record was lost, damaged, or destroyed, or cannot otherwise be produced and why; and must be signed by the agency's or creditor's records custodian and include contact information such as phone, mailing address, and e-mail address.

III. Reviewing Adverse Credit History and Other Information

The Department has the legal responsibility to determine whether an Individual has sufficiently demonstrated financial responsibility, character, and general fitness before it can approve or renew a mortgage loan originator license or a mortgage broker/lender license. To make this determination, the Department will consider the following:

- The Individual's credit history reflected in a credit report;
- Supplemental information and documentation requested from and provided by the Individual as determined necessary by the Department;
- Responses and information contained in the Individual's application filings;
- Previous and current license history with the Department, to include any regulatory actions that have occurred;
- Other information that reflects upon the Individual's character, general fitness, or financial responsibility;
- The timing and context of the information reviewed;
- Patterns of conduct; and
- Factors indicating that financially adverse information may be the result of the involuntary loss of job or income, divorce, or health issues. Under such circumstances, the Individual shall provide documents showing attempted workout arrangements with creditors or other factors that indicate the Individual has made an attempt to correct his or her financial difficulties.

No determination of financial responsibility, character and general fitness made by the Department will be based solely on the fact that an Individual has been a debtor in bankruptcy or has been the control person of an organization that filed a bankruptcy petition. Also, the Department will not base a license application denial solely on a license applicant's credit score or credit report.

Although the following may not be an exclusive list, the Department may consider the following factors, or a combination thereof, in determining whether to deny, condition, bar from renewal, suspend, or revoke a mortgage loan originator license or mortgage broker/lender license:

- The Individual has failed to fully provide any documentation required by the Department;
- The Individual has made a false attestation associated with a filing related to an application for a license or a license renewal;
- The Individual has failed to pay in full any past due account, lien, judgment or charged-off balance either as of the date of the issuance of a credit report to the Department, or at time of initial licensure, designation as a control person, or at renewal of any license. In reviewing this factor, the Department will make an exception for any account, lien, judgment, or charged-off balance which is solely due to medical expenses;
- The Individual has past due child support payments;
- The Individual has past due student loan payments;
- The Individual is in arrears or has failed to comply with the terms of a repayment plan or agreement entered into with a creditor;
- The Individual has failed to make timely payments under a plan or agreement with any state or federal tax or other regulatory agency;

- The Individual has three (3) or more accounts of any kind, except those solely related to medical expenses, 90 days or more past due;
- The Individual has been the subject of one or more foreclosures within the past three (3) years; and
- The individual has had a pattern of delinquent accounts, except those solely related to medical expenses, within the past three (3) years.

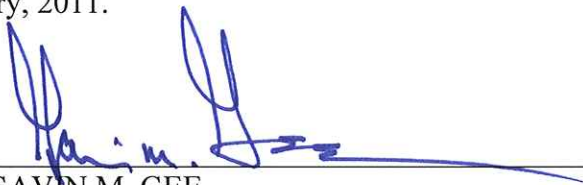
Financial responsibility, character and general fitness are continuing requirements for mortgage loan originators and must be met at all times, to include upon initial licensure and renewal.

Mortgage loan originators who successfully renewed their licenses for calendar year 2011, and those who are newly approved for licensure on or before October 31, 2011, will have until October 31, 2011, to meet all requirements of Idaho's Financial Responsibility Policy. Any new applicant who fails to meet such requirements by the October 31, 2011 deadline will not be issued a license for calendar year 2012, and licenses will not be renewed for calendar year 2012 for existing licensees who fail to meet such requirements by the October 31, 2011 deadline.

No mortgage loan originator license or mortgage broker/lender license will be approved on or after November 1, 2011 unless compliance with Idaho's Financial Responsibility/Fitness Policy has been met. Applications will be deemed withdrawn or abandoned if not completed within sixty (60) days of notification to the applicant by the Department of deficiencies in the application.

DATED this 31st day of January, 2011.




 GAVIN M. GEE
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